IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(*Special Original Jurisdiction*)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

P R E S E N T

THE HON'BLE MR JUSTICE ELIPE DHARMA RAO

* * *

WRIT PETITION NO : 7923 of 2005

Between :

Smt. S. Maremma W/o S. Shadrak
R/o Enugubala (V) Yemmiganur (M), Kurnool District

..... PETITIONER

A N D

1 The Joint Collector, Kurnool, Kurnool District
2 The Revenue Divisional Officer, Audoni, Kurnool District
3 The Mandal Revenue Officer, Yemmiganur Mandla, kurnool District

..... RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ, order or direction more particularly one in the nature of Writ of Mandmaus declare the impugned order or the 1st respondnet passed in Rc. No. CS3/528/2004, dt 11-02-2005 as illegal, arbitrary and contrary to law and against the decisions of the court and consequently while directing the respondents to accord opportunity to lead evidence before the 2nd respondent grant permission to supply essential commodities pending enqiry in view of the existing order in the interest of justice and to pass such otehr order or orders as this Hon'ble Court may deem fit and proper in the cirumstances of the case.

Counsel for the Petitioner : MR.D.SETHUMADHAVAN

Counsel for the Respondents: GOVT PLEADER FOR CIVIL SUPPLIES

The Court made the following :

O R D E R :

This writ petition is filed assailing the impugned order passed by the first respondent in Rc.No.CS3/528/2004, dated 11-2-2005 as illegal, arbitrary and contrary to law and consequently direct the respondents to accord opportunity to lead evidence before the second respondent and grant permission to supply essential commodities pending enquiry in view of the existing order in the interest of justice.

The petitioner was running Fair Price Shop at Engubala village of Yemmiganur Mandal of Kurnool district for the last eight years. The second respondent has taken up enquiry into certain allegations and on the basis of enquiry a show cause notice dated 07-11-2004 was issued to her. The petitioner submitted explanation on 12-12-2004 and without considering her explanation, impugned order dated 17-12-2004 was passed suspending her authorization without mentioning any specific period of its validity. Questioning the impugned order dated 17-12-2004 passed by the second respondent, the petitioner filed an appeal before the first respondent and sought stay of impugned order but the same was rejected. Thereupon, the petitioner filed WP.No.24709 of 2004 seeking direction to the respondents to allow her to continue as fair price shop dealer and lift the stocks. This Court while disposing WP.No.24709 of 2004 on 30-12-2004 held that from a perusal of the order dated 17-12-2004, passed by the second respondent, it is evident that the authorization of the

petitioner was suspended after conducting enquiry. Therefore, it has to be treated as a substantive punishment. Suspension, as a punishment, has to be for a specified period. There cannot be any indefinite suspension, as a punishment. Further, the findings recorded by the second respondent, prima facie, do not accord with the general principles of evidence. Petitioner flatly denied the allegations made against her. The second respondent took the view that except denying, she did not place any material in support of her contentions. The question of an individual being required to prove a negative fact does not arise. The allegation against the petitioner could have been sustained only on the basis of specific instances. For the foregoing reasons, the writ petition is allowed and the order of suspension passed against the petitioner shall stands stayed, till the disposal of the appeal by the first respondent.

The petitioner submits that the first respondent in his proceedings Rc.No.CS3/528/2004, dated 11-2-2005 came to conclusion that the charge against her for selling rice at Rs.5.50 paise instead of Rs.5.25 paise violating the conditions of authorization and dismissed the appeal on 11-02-2005 and directed the second respondent to dispose of the case pending before him.

While things stood thus, the learned counsel appearing for the petitioner seeks to contend that no alternate arrangement is made though suspension of authorization is implied under Control Order 5 (4) of 1971 has to be treated as not later than 90 days and since the Revenue Divisional Officer after conducting enquiry passed the orders of punishment without issuing show cause notice, which was categorically affirmed by this court in WP.No.24709 of 2004 stating that the impugned punishment

is in substantive nature preceded by the enquiry and the first respondent while dismissing the appeal ought to have treated suspension period for a definite period. Instead, the first respondent again directed the second respondent to dispose of the case pending before him and the impugned order is ex-facie illegal and contrary to control orders.

He further submits that on 23-2-2005 the petitioner made a representation to the second and third respondents seeking direction to allot essential commodities but the third respondent in Proceedings L.DIS.No.122/05, dated 06-3-2005 intimated her that he is unable to allot the essential commodities stock in view of the order dated 11-02-2005 passed by the first respondent and accordingly returned her DD.

On the other hand, it is represented on behalf of the learned Govt.Pleader for Civil Supplies that on a complaint received from villagers of Enugubala village of Yemmiganur Revenue Mandal, the DTCS Yemmiganur enquired into the matter on 26-9-2004 and reported that the petitioner is selling the essential commodities viz., rice @ Rs.5.50 paise per Kg as against Rs.5.25 paise per Kg and distributing K.Oil only one litre per each coupon at Rs.10/- instead of Rs.9.50 paise per litre. On the basis of report of CSDT Yemmiganur, the Mandal Revenue Officer, Yemmiganur submitted a report to the Revenue Divisional Officer, Adoni for suspension of authorization. Consequently, the Mandal Revenue Officer, Yemmiganur passed orders in Rc.M/1218/2004 dated 17-12-2004 suspending the authorization of the petitioner. Questioning the said order, the petitioner filed an appeal before the Joint Collector, Kurnool and sought stay of the said order. The Joint Collector, Kurnool while rejecting the application seeking grant of stay directed to post the appeal for

hearing on 07-1-12005. In the meantime, the petitioner approached this Court and filed WP.No.24709 of 2004. This court allowed WP.No.24709 of 2004 and the order of suspension passed against the petitioner shall stand stayed till the disposal of the appeal by the first respondent. Thereafter, the counsel for the petitioner appeared before the Joint Collector, Kurnool and argued the matter and the same was heard on 05-2-2005. After perusing the record, the Joint Collector held that the enquiry conducted against the petitioner reveals that the charges made against him were proved and directed the Revenue Divisional Officer, Adoni to dispose of the case and accordingly dismissed the appeal. Questioning the orders dated 11-02-2005 in RC.No.CS3/528/04 passed by the Joint Collector, Kurnool, the present writ petition is filed.

Heard the learned counsel for the petitioner and the learned counsel appeared on behalf of the Govt.Pleader for Civil Supplies.

After hearing the learned counsel on either side, it appears that this writ petition is filed questioning the orders dated 11-02-2005 in RC.No.CS3/528/04 passed by the Joint Collector, Kurnool. The learned counsel for the petitioner seeks to contend that the impugned order is in the nature of remand, and therefore, the petitioner submitted a representation on 23-2-2005 to the second and third respondents seeking direction to allot essential commodities but the third respondent in Proceedings L.Dis.No.122/05 dated 06-3-2005 intimated that in view of the orders dated 11-2-2005 passed by the first respondent. Already the petitioner had filed WP.No.24709 of 2004 and this court while allowing WP.No.24709 of 2004 on 30-12-2004 observed that the second respondent took the view that the petitioner except

denying, she did not place any material in support of her contentions. In view of the orders passed in WP.NO.24709 OF 2004, the Joint Collector, Kurnool passed the orders and directed the Revenue Divisional Officer, Adoni to dispose of the case pending before him. While the matter is pending before the Revenue Divisional Officer, Adoni, the petitioner filed application before the second and third respondents seeking to allot essential commodities but the same was rejected by the third respondent on the ground that the first respondent had passed the orders in RC.No.CS3/528/04 dated 11-2-2005. At this stage, when the matter is pending consideration before the Revenue Divisional Officer, Adoni, the petitioner filed this writ petition, which is not maintainable. It is, however, left open to the petitioner to approach the Revenue Divisional Officer, Adoni and seek necessary orders.

The writ petition is accordingly dismissed. No costs.

APRIL 19th, 2005. ----------

I S L. ELIPE DHARMA RAO, J.

To

1) 2 CD copies

2) 1 CC to MR.SETHUMADHAVAN

3) 1 CC to Govt. Pleader for Civil Supplies, High Court of AP, High Court Buildings, Hyderabad.

4) The Joint Collector, Kurnool, Kurnool district.

5) The Revenue Divisional Officer, Adoni, Kurnool district.

6) The Mandal Revenue Officer, Yemmiganur Mandal, Kurnool district.